

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No.831 of 1983

Date of Decision.04.11.2011

Bhoj Dutt son of Bool Chand and anotherAppellants

Versus

Nawal Singh son of Ram Sarup and othersRespondents

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Roopak Bansal, Advocate
for respondent Nos.2 to 7.

2. RSA No.2315 of 1989

Arya Samaj Alipur Punarsthapait, Rishi Nagar, Sonapat (registered)
through Sh. Ram Dev Thakkar its PresidentAppellant

Versus

Shri Bhoj Dutt s/o Shri Bool Chand and othersRespondents

Present: Mr. Roopak Bansal, Advocate
for the appellant.

Mr. Harkesh Manuja, Advocate
for respondent No.1.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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K. KANNAN J.

1. Both the cases are connected in the sense that they are between the same parties though the reliefs claimed were distinct but in relation to the affairs of Arya Samaj, Alipur. The plaintiffs have filed the suit for a declaration that the sale made by the defendants Nos.2 to 5 in favour of the 1st defendant is void and for an injunction restraining

them from in any manner interfering with the possession of the property. At the time of institution of suit, there had been merely an agreement of sale but subsequently, the sale deed had been executed on 01.12.1978. The plaintiffs had, therefore, amended the plaint to bring the subsequent event and has sought for a declaration of sale as invalid and void. The trial Court held that the property belonging to Arya Samaj, Alipur but proceeded to dismissed the plaintiffs' suit, who were admittedly not owners. The court found that they had no locus standi to institute the suit in relation to the property belonged to the society. The Appellate Court affirmed the finding that the plaintiffs did not have locus standi but held that the sale had been properly executed on appropriate resolution of the Executive Committee of the Arya Samaj. The plaintiffs were contending that defendants No.2 to 5 have been acting office-bearers of Arya Samaj, Rishi Nagar, Sonapat when the property actually belonged to the Arya Samaj, Alipur. The Appellate Court found that Arya Samaj Alipur Punarsthapit, Sonapat was really the same as Arya Samaj, Alipur and the attempt of the plaintiffs in trying to show that there were two different entities was not justified. The Court also found that the sale had been properly made and there was no scope for interference.

2. On the basis of pleadings, following substantial questions of law have been framed for consideration in RSA No.831 of 1983:-

- (i) whether the sale by defendants No.2 to 5 was valid and binding on the Arya Samaj, Alipur on the ground that the defendants No.2 to 5 had the competency to represent the society and bind the society?

(ii) whether the plaintiffs, who claimed to be members of the society, the locus standi to impeach the sale by the persons claiming to be the authorized persons to sell the property of the society in favour of 1st defendant?

3. On the first issue of whether the plaintiff could maintain the action for declaration of injunction, the answer resides in the fact that the provisions of Section 5 and 6 of the Societies Registration Act itself detail as to who could be competent to represent a society and how a suit could be filed by or against a registered society. Admittedly, the suit is filed on the basis that the property belongs to a registered society of Arya Samaj, Alipur. The plaintiffs are two of the life members and the declaration in relation to the property of the society could be done only in the manner contemplated under the provisions of the said Act. It should be first determined as to how the title to the property belonging to a registered society itself could vest. Section 5 of the Societies Registration Act reads thus:-

“The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.”

4. Unlike a company, a society is not a juristic person. In *Tata Memorial Hospital Workers Union Vs. Tata Memorial Centre (2010) 8 SCC 480*, the Hon'ble Supreme Court held that the property belonging to a society does not give the society a corporate status in the matter of holding and acquiring property; it merely describes the the property which vests in the trustee or the governing body for the time being.

The manner of vesting has also been considered by the Hon'ble Supreme Court in *Dharam Dutt Vs. Union of India (2004) 1 SCC 712*. It must, therefore, be seen that the property that belongs to the society must be taken as vesting only on the executive members of the society.

5. The action of the society of whether the transaction of the sale could be valid nor not, could, therefore, be tested only in the light of what power a registered society has with reference to its properties and the manner of its dealing. If there is no express prohibition contained in the Memorandum of Association or the Bye-laws for dealing with the properties purchased in the name of the society, then it should only be seen that the property that vests in the managing committee could be dealt with by an appropriate resolution. In this case, admittedly there has been a resolution of the society for transfer of the property and it is claimed and not denied by the appellants that one of the plaintiffs himself has been a party to the resolution. It is contended by the plaintiff that a majority decision had been taken for sale of the property and it has been accordingly sold. The sale in favour of the 1st defendant cannot be impeached at the instance of the plaintiffs when the transaction of sale is admittedly supported by a majority resolution of the governing body of the society. The sale would, therefore, bind the plaintiffs and the plaintiffs cannot contest the same by means of a declaratory action. Both as regards the frame of suit as well as the validity of the sale, the lower Appellate Court has correctly considered the matter and I find no reason to interfere with the same. The second appeal filed in RSA No.831 of 1983 shall, therefore, stand dismissed.

6. The appeal in RSA No.2315 of 1989 is at the instance of the

society, which seeks for the relief of injunction restraining the defendants from interfering with the plaintiff's power of management as a President of the Society. At the time of argument to a query whether the plaintiff continues to be a President, the counsel for the appellant states that he has no such instructions and in any event, the same person cannot be a President at this length of time. The relief sought for in the plaint has, by sheer passage of time, become stale and I do not propose to open the issue of the entitlement for the relief of injunction sought at the instance of a person claiming to be the President of the society. No relief is necessary and the appeal in RSA No.2315 of 1989 would require to be dismissed as infructuous and dismissed as such.

(K. KANNAN)
JUDGE

November 04, 2011
Pankaj*